

CANADA / JUDGMENT

R. v. Singh

2023 BCSC 865

COURT

Supreme Court of British Columbia

DECIDED

24 May 2023

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2023 BCSC 865 R. v. Singh IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Singh, 2023 BCSC 865 Date: 20230524 Docket: X084308 Registry: New Westminster Rex v. Amarpreet Singh Before: The Honourable Mr. Justice Verhoeven Reasons for Judgment Counsel for the Crown: W. Aujla The Accused, self-represented: A. Singh Place and Date of Hearing: New Westminster, B.C. May 11, 2023 Place and Date of Judgment: New Westminster, B.C. May 24, 2023

I. Introduction

- [1] The appellant applies for reconsideration of the decision I rendered March 28, 2023, dismissing his appeal from a decision of the provincial court. My reasons for judgment are indexed at 2023 BCSC 495. The reasons for judgment are published and readily available. It is therefore unnecessary for me to set out much detail as to the decision I made.
- [2] In brief, Mr. Singh was convicted in the provincial court of five municipal bylaw offences relating to activities on his two properties located on 128th Street in Surrey, BC. He applied to adduce fresh evidence on the appeal. For the reasons stated in my reasons for judgment, I was not persuaded that the appellant had established a miscarriage of justice, within the meaning of s. 686(1)(a)(iii) of the Criminal Code. I declined to admit the fresh evidence Mr. Singh sought to adduce on the appeal, and dismissed the appeal.
- [3] On April 26, 2023 Mr. Singh filed an application with the Court of Appeal for leave to appeal my decision.
- [4] Mr. Singh's application for leave to appeal states that he seeks an order setting aside the trial judgment and order, and for a new trial.
- [5] Mr. Singh has refused to sign my order dismissing the appeal, that was prepared by counsel for the respondent. Accordingly, my order has not been entered. He argues that since the order is unentered, I have jurisdiction to reconsider my decision.
- [6] Mr. Singh's application is the same or similar to an application to the Court of Appeal for re-opening of an appeal. In my view similar principles should apply to this court, exercising appellate jurisdiction on an appeal from the Provincial Court.

- [7] The principles were reviewed in *Gichuru v. Vancouver Swing Society*, 2021 BCCA 246, at paras. 5-7, and summarized as follows:
- [5] The jurisdiction to re-open an appeal is one that is exercised with great caution given the extraordinary nature of such a request, as explained by Justice Donald in *R. v. Chudley*, 2015 BCCA 391:
- [7] This Court has the jurisdiction to entertain a request to re-open an appeal when the formal order has not yet been entered. But we do not automatically embark upon a full-scale process to re-open in these circumstances; that is, we do not call for an exchange of submissions and evidence regarding the application. Rather, given the extraordinary nature of a re-opening, we must be satisfied that the applicant can meet the threshold of showing that the grounds are capable of demonstrating a potential miscarriage of justice. Otherwise, a lengthy inquiry could be undertaken merely on the basis of an application, regardless of its potential merit.
- [6] In *R. v. Hummel*, 2003 YKCA 4, the court described the jurisdiction to re-open an appeal [as] an "extraordinary power" that should be "exercised rarely" (at para. 3), and listed five factors relevant to be considered (at para. 24):
1. Finality is a primary but not always determinative factor.
 2. The interests of justice include finality and the risk of a miscarriage of justice.
 3. The applicant must make out a clear and compelling case to justify a re-opening.
 4. If the case has been heard on the merits the applicant must show that the court overlooked or misapprehended the evidence or an argument.
 5. The error must go to a significant aspect of the case.
- [7] The court in *Hummel* required the applicant to demonstrate "a clear and compelling case that a miscarriage of justice will result" (at para. 29).
- [8] On the application for reconsideration, Mr. Singh provided me with a three page written outline of submissions, which he read out in court. I have reviewed the submissions again following the hearing of his application.
- [9] Mr. Singh's submissions on the application for re-opening the appeal are substantially the same as those he made previously on the hearing of the appeal itself. He again argues that the judicial justice ought to have found that the activities in question were legal non-conforming uses, a defence that he failed to make out at the trial. He now argues that his failure to make out the defence was due to a flawed investigation by the by-law officer. He repeats his contention that there was prosecutorial misconduct in failing to disclose to him and bring to the attention of the court evidence that might have made out his case. He argues that the trial was unfair. In my respectful view, Mr. Singh is simply seeking a do-over of the appeal, hoping for a better result, and with the benefit of the reasons for judgment

explaining why his appeal was unsuccessful. The potential grounds he advances are essentially the same as were previously argued, or are grounds that he could have argued, but did not argue.

- [10] His application does not show a basis for potentially establishing that I overlooked or misapprehended the evidence or an argument, going to a significant aspect of the case. In brief, in view of the factors set out in *R. v. Hummel*, 2003 YKCA 4, I am not persuaded that there is potential merit in Mr. Singh's arguments for re-opening the appeal. Mr. Singh has not overcome the threshold onus, which requires showing grounds that are capable of demonstrating a potential miscarriage of justice.
- [11] Of course, Mr. Singh will have the opportunity of persuading a justice of the Court of Appeal that leave to appeal my decision should be granted.
- [12] Mr. Singh's application to re-open the appeal is dismissed.
- [13] As Mr. Singh has refused to sign the order arising out of the reasons for judgment I issued March 28, I make a further order dispensing with the need for his approval of that order. I also order that Mr. Singh's approval of the order arising from these reasons is not required. "Verhoeven J."

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Prepared on 25 October 2026 · Esheria